REMARKS

Claims 1-16 are currently pending in the patent application. The Examiner has rejected Claims 1-16 under 35 USC 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention; Claims 12-14 under 35 USC 101 as non-statutory subject matter; Claims 1-2 and 5-16 under 35 USC 102(e) as anticipated by Hernandez, et al; Claims 1-2 and 5-16 under 35 USC § 102(e) as being anticipated by Saari, et al; Claims 3-4 under 35 USC 103 as unpatentable over the teachings of Hernandez in view of the AAPA; and, Claims 3-4 under 35 USC 103 as being unpatentable over the teachings of Hernandez in view of the AAPA. For the reasons set forth below, Applicants respectfully assert that all of the pending claims are definite and patentable over the cited prior art.

With regard to the rejections of Claims 1-16 as indefinite, Applicants have amended the language of each of the claims and respectfully submit that the claims, as amended, are definite. The language which was objected to by the Examiner was the recitation of a "usage type category". Applicants clearly disclosed the meaning of the term "usage type category" throughout the Specification as an assigned value which represented the server application complexity (see: page 4, lines

12-13 and page 13, line 1 through page 14, line 14). However, since Applicant's believe that the term "usage category" still adequately recites that feature of the invention, Applicants have amended the language of Claims 1, 6, 12, 15 and 16 to remove the term "type" from the claims. Applicants believe that the amendments address any definiteness concerns.

With regard to the rejection of Claims 12-14 as non-statutory subject matter, Applicants respectfully disagree with the Examiner's conclusion that the claim for the data structure does not show any relationship between the matrix entries and that the structure would not produce a useful, concrete, and tangible result. As is expressly recited in the claim, the plurality of costs are assigned based upon the location of the first and second entries within the matrix. The plurality of costs are the tangible result and they are assigned due to the location relationship of the first plurality of matrix entries for capacity values and the second plurality of matrix entries for usage categories. Applicants therefore respectfully request withdrawal of the rejection based on 35 USC 101.

With regard to the rejection of Claims 1-2 and 5-16 based on the Hernandez patent, Applicants respectfully disagree. The Hernandez patent is directed to network billing based on the amount of traffic across a network link. Hernandez teaches steps of monitoring traffic over the links (see: step 55 in Fig. 2B and

step 68 in Fig. 4A) and then determining billing amounts based on the traffic usage (see: step 56 in Fig. 2B and step 69 in Fig. 4A). Finally, Hernandez uses a simple table to record the percentages of the determined billing amounts which are being charged to the sending and receiving locations/clients.

The Hernandez patent does not anticipate the claimed invention. First, it is to be noted that monitoring the amount of traffic on a link is not the same nor suggestive of assigning a capacity value for a server. An amount of traffic on a network link is not the same as nor representative of the capacity of a server on that network. Next, Applicants respectfully assert that the Hernandez patent does not provide any teachings regarding assigning a usage category based on application complexity or of mapping the usage category, along with the capacity value, in a matrix. Hernandez looks at the usage environment (i.e., the links) for traffic values, but does not look at data-dependent usage categories for a server. Hernandez also provides no teachings regarding assigning costs based on location within a matrix. Hernandez simply determines the traffic amount and determines a billing amount based on traffic. The capacity is not taken into account; and therefore there is no assigning of a capacity value. The data which comprises the network traffic is not taken into account in Hernandez; therefore, there is no assigning of a usage category. Finally,

the mapping of percentages of total amount for the sending and receiving amounts is not the same as or suggestive of mapping capacity value and usage category and then assigning costs based on location within the resulting matrix.

Applicants respectfully assert that the determining of a usage environment (i.e., the Hernandez links) is not the same as assigning a usage category (i.e., the data-dependent application complexity-based value of the present invention). Clearly the Hernandez disclosure of monitoring traffic over identified links and then establishing pricing based on the amount of traffic does not anticipate the claimed invention having the means and steps for assigning capacity value and usage category, mapping values on a matrix, and then assigning costs based on location within the matrix.

For a patent to anticipate another invention under 35 USC § 102(b), the patent must clearly teach each and every claimed feature of the anticipated invention. Since the Hernandez patent clearly does not teach the assigning of a capacity value for each server, the assigning of a usage category for each server, the mapping of the capacity value and usage category into a matrix, or the assigning of costs based on location with the matrix, it cannot be maintained that the Hernandez patent anticipates each and every claim feature of the independent claims. Further, Applicants note that the cited teachings from Col. 3-4 for not

provide any disclosure of support level considerations. The cited passages deal with collection units and the collector subsystem which generates data on bandwidth and usage for billing. The units and subsystem provide no service support, however, and Hernandez provides no teachings to that effect. Accordingly, Applicants respectfully request withdrawal of the anticipation rejection based on Hernandez.

The Examiner has also rejected Claims 1-2 and 5-16 based on the Saari patent. Applicants respectfully disagree. The Saari patent deals with billing for use of a connection by determining usage charges not only on actual bytes transmitted across the network, but also on expected quality of service (see: Col. 5, lines 56 et seq.) which is provided in the billing cell of a network transmission from a user/connection requester. Under the Saari system, a user specifies the connection quality in the billing cell (e.g., maximum peak rate and acceptable cell loss ratio as detailed at Col. 5, lines 62-63) and the receiving node calculates the billing based on the actual usage (e.g., the traffic as a function of the number of bytes transmitted at the specified level of service). Saari does not, however, assign a capacity value for a server on the network. Saari simply monitors connection traffic, say value T, and then bills for T amount of traffic using either aT or bT, depending upon if the

user requested a-level service or b-level service. Capacity of a server on the network is simply not taught anywhere in Saari.

Next it is to be noted that Saari does not assign a usage category for a server on the network. As detailed above, the present invention assigns a usage category based on the application complexity of the application(s) at the servers. Saari has no server usage category teachings. Saari simply receives a user-specified level of service request for a network connection and applies that request level to the billing based on the amount of monitored traffic on the connection. Clearly, it cannot be said that Saari assigns a usage category to a server.

Furthermore, Saari does not illustrate or describe mapping values to a matrix for use in billing. While Saari shows several tables, none is a matrix of capacity values and usage categories. Finally, Saari does not teach or suggest assigning costs based on locations within a matrix. Saari simply applies the connection billing cell information to the monitored amount of connection traffic.

Applicants note that the Examiner again refers to the "usage environment" when rejecting the claim language. The present claims do not recite the determining of a usage environment (i.e., such as establishing the Saari connection); and, the determining of a usage environment is not the same as or suggestive of assigning a usage category (i.e., the

data-dependent application complexity-based value of the present invention) for a server on the network. Applicants also note that the cited Saari teachings in Col. 4, lines 18-42 make no mention of a service support level for computer services. While Saari does teach a connection service quality (see: Col. 5, as cited above) but does not teach a service support level for computer services from a server.

For a patent to anticipate another invention under 35 USC § 102(b), the patent must clearly teach each and every claimed feature of the anticipated invention. Since the Saari patent clearly does not teach the assigning of a capacity value for each server, the assigning of a usage category for each server, the mapping of the capacity value and usage category into a matrix, or the assigning of costs based on location with the matrix, it cannot be maintained that the Saari patent anticipates each and every claim feature. Accordingly, Applicants respectfully request withdrawal of the anticipation rejection based on Saari.

Claims 3-4 have been rejected as unpatentable over either Hernandez or Saari in view of the Applicant's Admitted Prior Art (AAPA). Applicants first refer the Examiner's attention to the arguments set forth above regarding the claimed assigning of capacity values for servers, assigning of usage categories for servers, mapping the assigned values in a matrix, and assigning costs based on locations within the matrix. Applicants
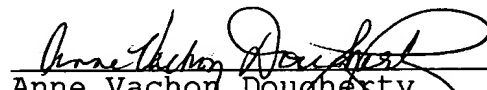
acknowledge that the AAPA does show multiple CPUs and published server standards. However, even if one were to modify the Hernandez or the Saari systems with multiple CPUs in their networks, one would not arrive at the invention as claimed, since neither the AAPA nor Hernandez, nor Saari teaches or suggests the assigning of a capacity value for each server, the assigning of a usage category for each server, the mapping of the capacity value and usage category into a matrix, or the assigning of costs based on location with the matrix. Absent some teachings regarding those claim features, the obviousness rejections cannot be sustained.

Based on the foregoing amendments and remarks, it is respectfully requested that the objections/rejections to this Application be reconsidered and withdrawn, the amendments made to the claims be approved, and the Claims 1-16, as amended, be passed to issuance.

Respectfully submitted,

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MARKED UP CLAIMS WITH AMENDMENTS SHOWN

1.   A method for valuation of server-based computer services for each of a plurality of computer server systems comprising the steps of:

assigning a capacity value for each of a plurality of computer server systems;

assigning a usage [type] category for each of said plurality of server systems;

mapping said capacity value and usage [type] category into a matrix; and

assigning costs based on location within said matrix.

6.   The method of Claim 1 wherein said assigning of a usage [type] category is based on the server application to be executed at each of said plurality of servers.

12.   A data structure for providing valuation of server-provided computer services for a plurality of computer server systems comprising:

a first plurality of matrix entries comprising a capacity value for each of a plurality of computer server systems;

a second plurality of matrix entries comprising a usage [type] category for each of said plurality of server systems; and

a plurality of costs assigned to said services based on location within said matrix.

15. A system for providing valuation of server-based computer services for each of a plurality of computer server systems comprising:

assignment component for assigning a capacity value for each of a plurality of computer server systems;

a usage assignment component for assigning a usage [type] category for each of said plurality of server systems;

processor component for mapping said capacity value and usage [type] category into a matrix; and

cost processing component for assigning costs based on location within said matrix.

16. A program storage device readable by machine, tangibly embodying a program of instructions executable by the machine to perform method steps for valuation of server-based computer services for each of a plurality of computer server systems said method steps comprising:

assigning a capacity value for each of a plurality of computer server systems;

assigning a usage [type] category for each of said plurality of server systems;

mapping said capacity value and usage [type] category into a matrix; and

assigning costs based on location within said matrix.